

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

David Chao Hua WU

Appl. No.: 10/629,797

Filed: July 30, 2003

For: **System and Method for
Approximating Division**

Confirmation No.: 9430

Art Unit: 2193

Examiner: Chat C. Do

Atty. Docket: 1875.4730000

**Petition to Re-mail Office Action with
Restart of Reply Period under 37 C.F.R. § 1.181**Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450**Mail Stop: Petitions**

Refund-Ref: 03/25/2008 0030052663

Credit Card Refund Total: \$1500.00

Sir:

Am Exp.: XXXXXXXXXXXX1005

It is hereby petitioned that the Office Action ("Non-Final Rejection"), dated January 25, 2007, for the above captioned application be re-mailed and with a restart of the reply period. It is not believed that any fees are necessary. However, if a petition fee is necessary, the petition fee can be charged to Deposit Account No. 19-0036.

On December 16, 2006, the United States Patent and Trademark Office (herein the "USPTO") began a pilot program to provide a limited number of Private PAIR users with the option of receiving electronic notification of some outgoing correspondence related to their US patents and patent applications retrievable through Private PAIR, instead of a paper mailing of the correspondence (herein "E-Office Action Pilot Program"). A copy of a United States Patent and Trademark Office, OG Notices: 16 January 2007, Electronic Notification of Outgoing Correspondence (e-Office Action) outlining the E-Office Action Pilot Program is attached as Exhibit A.

Adjustment date: 03/25/2008 CKHLOK
09/04/2007 INTEFSW 00001970 10629797
01 FC:1462 -400.00 OP

03/25/2008 CKHLOK 00000008 190036 10629797
01 FC:1452 100.00 DA 400.00 OP

Adjustment date: 03/25/2008 CKHLOK
09/04/2007 INTEFSW 00001970 10629797
02 FC:1453 -1500.00 OP

On January 10, 2007, SKGF, via Customer Number 26111, opted-in to participate in the E-Office Action Pilot Program. SKGF provided an email address of the firm's docketing department (FADKT@skgf.com) to receive email notifications when a new outgoing correspondence has been prepared for the patents or patent applications associated with the user's Customer Number. The email notification indicates that documents listed on the email notification may or may not be available for view up to 3 business days.

On January 25, 2007, the Transaction History for the captioned application, as available on Public or Private PAIR, indicates the USPTO mailed a Non-Final Rejection, and a Notification of a Correspondence was posted on January 31, 2007. A copy of the "Transaction History" for U.S. Application No. 10/629,797, printed from Private PAIR for this Petition, is attached as Exhibit B. According to the SKGF docketing department, there is no record that a paper copy of the Non-Final Rejection was ever mailed by the USPTO to SKGF via standard U.S. postal mail service.

On January 25, 2007, SKGF opted-out of its participation in the E-Office Action Pilot Program because of problems encountered with the functionality and manageability of the USPTO correspondence received via the pilot program. A copy of a "Private PAIR e-Office Action Pilot Report Form" outlining the observations by SKGF of the e-Office Action Pilot Program is attached as Exhibit D.

On February 1, 2007, the SKGF docketing department received an email at the email address FADKT@skgf.com with subject line "Private PAIR Correspondence Notification for Customer Number 26111" indicating the existence of a new outgoing

Atty. Dkt. No. 1875.4730000

correspondence for the captioned application. A copy of this email is attached as Exhibit C. This email included notifications related to other application numbers associated with Customer Number 26111, which have been redacted from Exhibit C since they are unnecessary to this proceeding.

On February 2, 2007, the Transaction History for the captioned application, as available on Public or Private PAIR, indicates an "electronic review" occurred for an outgoing correspondence(s) for the above captioned application. However, the SKGF docketing department has no record of viewing or processing the Non-Final Rejection that was posted to PAIR on January 31, 2007. Additionally, a search of the file jacket and the docketing records indicates that that no new outgoing correspondence from the USPTO was entered into the corresponding SKGF file, or processed in any way by the SKGF docketing department, during the Pilot Program. SKGF is unable to conclusively determine whether anyone in the firm ever viewed the Non-Final Rejection dated January 25, 2007 during the Pilot Program.

On August 21, 2007, the undersigned was informed by Carolyn Moore that an internal audit had revealed that the above-captioned application was abandoned. The undersigned first received notification of the outstanding Non-Final Rejection via this information, since the Non-Final Rejection was not entered into the SKGF docketing system while participating in the Pilot Program.

In support of this petition, Applicant submits below the declaration of Carolyn Moore, the head of docketing at SKGF.

In her petition, Ms. Moore declares and states:

1. She is the Docketing Administrator at Sterne, Kessler, Goldstein & Fox P.L.L.C. (hereinafter "SKGF"), located at 1100 New York Avenue, NW, Washington, DC 20005. She has 26 years of professional experience as an intellectual property support Manager, with 11 years of experience as a Docketing Administrator and 15 years as a Foreign Filing Administrator. She has been employed with SKGF for 21 years.

2. She has direct responsibility for monitoring, reviewing and docketing all incoming correspondence for SKGF.

3. That the correspondence in paragraph (2) included all correspondence received from the United States Patent and Trademark Office (USPTO) during SKGF's participation in the USPTO's Electronic Outgoing Correspondence Notification (e-Office Action) pilot program. SKGF participated in this pilot program beginning January 10, 2007, through January 25, 2007, for correspondence that was associated with USPTO customer no. 26111.

4. That in addition to her background credentials mentioned above, on December 14, 2006, she and others from the SKGF docketing department, (Karen Lynch, Rosanna Parra, Marco Sosa, Noveta Adams and Thomas Jackson), participated in a USPTO webinar training program for participants in this pilot program. Including myself, there is a combined approximately 100 years of professional intellectual property and docketing experience among the listed individuals. Most of these individuals have experience at SKGF ranging from 5 years to 26 years.

5. That to prepare for the pilot program, in addition to the above named SKGF docketing department personnel, SKGF Information Technology professionals (Vaughan Butts - Director of Information Technology and Teresa Neely - Business Application Specialist) participated in

the USPTO webinar training program for participants in this pilot program. The SKGF Informational Technology Department provided further training and assistance as needed to the SKGF docketing department during the pilot program.

6. That during the pilot program, the SKGF docketing department put in place a business routine that could reasonably be relied upon to avoid errors in docketing for correspondence that SKGF received under the pilot program. During the pilot program, e-mail notifications for customer no. 26111 were received at the SKGF Docketing Department email address "FADKT." This was an e-mail address that was already in use for other items and was checked at least daily.

7. That as the Docketing Administrator, she had direct responsibility for receiving and reviewing the email notifications for customer no. 26111. Among the e-mail notifications that were received during this program, were e-mail notifications for each respective application numbers as follows:

09/689,784 - e-mail notification received January 25, 2007;

10/629,797 - e-mail notification received February 1, 2007 (the above-cited application);

11/194,580 - e-mail notification received January 25, 2007;

10/685,801 - e-mail notification received January 13, 2007; and

11/126,600 - e-mail notification received January 25, 2007.

8. That a business routine was established for the pilot program, for e-mail notifications that were received as a result of the pilot program, to ensure that documents that were retrieved were then included with other USPTO correspondence that SKGF received by paper mail for entry into our docketing system. The procedure for the

pilot program included the following steps. A person in docketing who had been trained on using PAIR would go to private PAIR and go to the "View Correspondence" page for customer no. 26111. The outgoing correspondence was reviewed in Private PAIR and corresponding documents were printed for each listed application utilizing the Private PAIR Image File Wrapper interface via the View Correspondence page.

9. That in accordance with standard firm docketing procedures, each (printed) PTO document was logged into SKGF's Incoming Correspondence Log. Also, in accordance with standard firm docketing procedures, each (printed) PTO document was docketed in the firm electronic docketing system (IPMASTER) and secondary backup paper docketing system. However, for an unknown reason, although the SKGF docketing department received e-mail notification from the USPTO mentioning these applications, no office action for these applications was docketed into the SKGF docketing system.

10. That after the pilot program, on January 31, 2007 through February 1, 2007, a final audit and review was conducted of all the "outgoing correspondence" documents posted on the View Correspondence page for customer No. 26111 for the pilot program period of January 10, 2007 through January 25, 2007. All of the documents posted on the View Correspondence page as of January 31, 2007 for that period were printed out, verified with the firm Incoming Correspondence Log, verified in the firm docketing system (IPMASTER) and docketed if necessary. For an unknown reason, none of the missing the office actions for the above-mentioned applications were found in this review either.

Relief Requested

Based on the facts summarized *supra*, Applicant respectfully requests that the January 25, 2007 Non-Final Rejection Office Action be remailed and with a restart of the reply period.

Applicant Petition in the Alternative to Revive under 37 C.F.R. § 1.137(a) to Revive for Unavoidable Abandonment

Alternatively, Applicant respectfully petition to revive the above-captioned application for unavoidable abandonment. The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 C.F.R. § 1.137(a) was unavoidable.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office.

The undersigned submits that the delay resulted from an error on the part of an employee in the performance of a clerical function, and that such error is sufficient to establish that the delay was an unavoidable delay. Ms. Moore's petition establishes that the delay was unavoidable as (A) a docketing error was the cause of the delay at issue; (B) there was in place a business routine for performing this docketing clerical function and this business routine could reasonably be relied upon to avoid errors in its performance; and (C) that Carolyn Moore and the other docketing employees involved with the pilot program were sufficiently trained and experienced with regard to the function and routine for performance of the docketing and reliance upon such employees represents the exercise of due care by the undersigned.

This petition is accompanied by a reply to the office action. The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

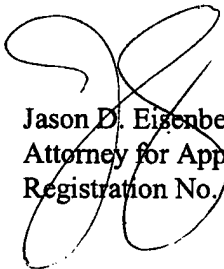
If the Petition to Re-mail Office Action is granted, Applicant respectfully requests that the Patent Office refund the fee for the Petition to Revive for Unavoidable Abandonment.

Relief Requested

Based on the facts summarized *supra*, Applicant respectfully requests that the application be revived.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Jason D. Eisenberg
Attorney for Applicant
Registration No. 43,447

Date: 8/31/07

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Washington, D.C. 20005-3934
(202) 371-2600

716640_1.DOC

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND				
1 Date of Request: 01/02/08		2 Serial/Patent # 10/629,797		
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing (2007)			\$
	Amendment			\$
	Extension of Time (2253)			\$
	Notice of Appeal/Appeal			\$
X	Petition (1453)		08/31/07	\$ 1,500.00
	Issue			\$
	Cert of Correction/Terminal Disc.			\$
	Maintenance			\$
	Assignment			\$
	Other (2801)			\$
		7 TOTAL AMOUNT OF REFUND		\$ 1,500.00
		8 TO BE REFUNDED BY: CC		
		X	Treasury Check	
			Credit Deposit A/C #:	
		9	<div style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; text-align: center;"> -- </div>	
10 REASON:				
	Overpayment			
	Duplicate Payment			
X	No Fee Due (Explanation):			
Petition under 1.137(b) not filed				
11 REFUND REQUESTED BY:				
TYPED/PRINTED NAME: Charlema Grant		TITLE: Atty		
SIGNATURE: /Charlema Grant/		PHONE: X-3215		
OFFICE: OP				
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APPROVED: 		DATE: 3/25/08		

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to: